1999

Brookside Mobile Home Park, LTD., v. Sam Peebles : Brief of Appellant

Utah Court of Appeals

Russell A. Cline; Crippen & Cline; attorneys for appellees.
Dennis K. Poole, John L. Adams; Poole, Sullivan & Adams; attorneys for appellant.

IN THE UTAH COURT OF APPEALS

BROOKSIDE MOBILE HOME PARK, LTD.,a Utah Limited Partnership dba BROOKSIDE MOBILE HOME PARK, Plaintiff, Appellant, and Cross-Appellee, vs. SAM PEEBLES aka SAMUEL B. PEEBLES, an Individual; and HAROLD BOYD PEEBLES, an Individual, Defendants, Appellees, and Cross-Appellants.	CASE NO. 990518 PRIORITY NO. 15

APPEAL FROM THE JUDGMENT OF THE HONORABLE J. C. FRATTO, THIRD DISTRICT COURT ENTERED MAY 13, 1999

BRIEF OF APPELLANT

DENNIS K. POOLE [2625]
JOHN L. ADAMS [6160]
POOLE, SULLIVAN & ADAMS, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84117
Telephone (801) 263-3344
ATTORNEYS FOR APPELLANT

Russell A. Cline [4298]
CRIPPEN & CLINE L.C.
310 South Main Street #1200
Salt Lake City, Utah 84101
Telephone (801) 539-1900
ATTORNEYS FOR APPELLEES

IN THE UTAH COURT OF APPEALS

BROOKSIDE MOBILE HOME PARK, LTD.,a Utah Limited Partnership dba BROOKSIDE MOBILE HOME PARK,	)	
Plaintiff, Appellant, and Cross-Appellee,	)	CASE NO. 990518
vs.	)	
SAM PEEBLES aka SAMUEL B. PEEBLES, an Individual; and HAROLD BOYD PEEBLES, an Individual,	)	PRIORITY NO. 15
Defendants, Appellees, and Cross-Appellants.	)	

APPEAL FROM THE JUDGMENT OF THE HONORABLE J. C. FRATTO, THIRD DISTRICT COURT ENTERED MAY 13, 1999

BRIEF OF APPELLANT

DENNIS K. POOLE [2625]
JOHN L. ADAMS [6160]
POOLE, SULLIVAN & ADAMS, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84117
Telephone (801) 263-3344
ATTORNEYS FOR APPELLANT

Russell A. Cline [4298]
CRIPPEN & CLINE L.C.
310 South Main Street #1200
Salt Lake City, Utah 84101
Telephone (801) 539-1900
ATTORNEYS FOR APPELLEES

TABLE OF CONTENTS

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW 1

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES 3

STATEMENT OF THE CASE 3

STATEMENT OF THE FACTS 5

SUMMARY OF THE ARGUMENT 11

ARGUMENT 12

I. THE TRIAL COURT ERRONEOUSLY OVERTURNED ITS DECISION GRANTING BROOKSIDE SUMMARY JUDGMENT. 12

A. The Sam Peebles' Affidavits Submitted in Opposition to Brookside's Motion for Summary Judgment Should Not Have Been Considered by the Trial Court 13

B. Brookside was a Bona Fide Purchaser of the Park who Purchased Without Actual or Constructive Notice of the Peebles' Alleged Lease 16

C. The Trial Court's Original Decision Granting Brookside's Motion for Summary Judgment Should be Reinstated. 18

II. THE TRIAL COURT ERRED IN APPLYING THE UTAH MOBILE HOME PARK RESIDENCY ACT TO BROOKSIDE'S CAUSE OF ACTION INSTEAD OF UNLAWFUL DETAINER. 19

III. THE TRIAL COURT ERRED IN DENYING BROOKSIDE ATTORNEYS' FEES AND COSTS WHEN IT PREVAILED AGAINST THE PEEBLES' CLAIMS UNDER THE UTAH MOBILE HOME PARK RESIDENCY ACT 23

CONCLUSION 25

MAILING CERTIFICATE 26

ADDENDUM 27

Addendum "A"
Mobile Home Park Residency Act, Utah Code Annotated Sections 57-16-1 through 57-16-15.1

Addendum "B"
Unlawful Detainer by Tenant for Term Less Than Life, Utah Code Annotated Section 78-36-3

Addendum "C"
Decision Dated October 23, 1997 granting Brookside Summary Judgment

Addendum "D"
Decision Dated January 20, 1998 overturning Summary Judgment

Addendum "E"
Decision Dated February 24, 1999 denying Attorney's Fees and Court Costs

Addendum "F"
Judgment Dated May 13, 1999

TABLE OF AUTHORITIES

CASES

Automatic Gas Distributors, Inc. v. State Bank of Green River, 817 P.2d 441, 443 (Wyo. 1991) 14

Blodgett v. Marser, 590 P.2d 298, 303 (Utah 1978) 16, 17

Brown & Root Indus. Serv. v. Industrial Comm'n, 947 P.2d 671, 675 (Utah 1997) 2

C. T. v. Johnson, 977 P.2d. 479, 480 (Utah 1999) 2, 20

Franks v. Nimmo, 796 F.2d 1230, 1237 (10th Cir. 1986) 13

Grahn v. Gregory, 800 P.2d 320, 328 (Utah App. 1990) 16, 17, 18

Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993) 1, 2, 13, 14

Parker v. Dodgion, 971 P.2d, 496, 497 (Utah 1998) 1, 13

Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896, 900 (Utah 1989) 14

Rushton v. Salt Lake County, 977 p.2d. 1201, 1203 (Utah 1999) 2, 3

Webster v. Sill, 675 P.2d 1170, 1172-73 (Utah 1983) 13

STATUTES

57-16-1 through 57-16-15.1 Utah Code Annotated 3

57-16-2 Utah Code Annotated 19

57-16-3(3) Utah Code Annotated 19

57-16-4, -5, -6, -7.5, and -8 Utah Code Annotated 19, 20

57-16-4(2) Utah Code Annotated 19

57-16-4(4) Utah Code Annotated 22

57-16-8 Utah Code Annotated 22, 23, 24

57-16-9, Utah Code Annotated 7, 13

78-2a-3 Utah Code Annotated. 1, 2, 3, 13, 14, 16, 17, 18,19, 20, 22, 23, 24

78-36-3 Utah Code Annotated 3, 7, 18, 19, 20

78-36-3(11)(b) Utah Code Annotated 20, 22

78-36-10 Utah Code Annotated 22

OTHER AUTHORITIES

49 AM. JUR. 2d *Landlord and Tenant* at § 252 (1995) 14, 16

JURISDICTIONAL STATEMENT

This appeal is taken from the Third District Court's reversal of its decision granting summary judgment to Plaintiff Brookside Mobile Home Park, Ltd. ("Brookside"), dismissal of Brookside's claim of unlawful detainer at the conclusion of Brookside's case during trial, and denial of Brookside's Motion for Allowance of Attorney's Fees and Court Costs. This Court has jurisdiction over this appeal pursuant to Section 78-2a-3 of the *Utah Code Annotated.*

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

I. Whether the trial court erred in overturning its Decision dated October 23, 1997, granting Brookside Summary Judgment because (a) the trial was precluded from considering the Affidavits of Defendant Samuel B. Peebles ("Sam Peebles") dated November 17, 1997 and November 18, 1997 due to their contradiction of earlier deposition testimony of Sam Peebles; and (b) because Plaintiff had no actual or constructive notive of any alleged Peebles' lease? (R. 744-747) The trial court's overturn of its decision is reviewed without deference to the trial court's determination because summary judgment deals only with questions of law. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. In reviewing a grant of summary judgment, the facts are considered in the light most favorable to the nonmoving party. "[W]e may affirm a grant of summary judgment on any ground available to the trial court." Parker v. Dodgion, 971 P.2d, 496, 497 (Utah 1998); Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993).

Brookside preserved this issue for appeal before the trial court by the arguments it made in its Memorandum in Support of Motion for Summary Judgment, Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment, and Memorandum in Opposition to Defendants' Motion for Reconsideration. (R. 440-528, 593-598, 717-724)

II. Whether the trial court erred in determining that Brookside was required to provide Sam Peebles and his father Defendant Harold Boyd Peebles (together "the Peebles") a 15-day notice to quit under the *Mobile Home Park Residency Act* as opposed to a 5-day notice for unlawful detainer? (R. 1292-1294) The trial court's interpretation of a statute is a question of statutory construction which is reviewed under a "'correction of error'" standard. On appeal, the trial court's legal conclusions are given no deference but are reviewed for correctness Brown & Root Indus. Serv. v. Industrial Comm'n, 947 P.2d 671, 675 (Utah 1997); C. T. v. Johnson, 977 P.2d. 479, 480 (Utah 1999); Rushton v. Salt Lake County, 977 p.2d. 1201, 1203 (Utah 1999). Brookside preserved this issue for appeal before the trial court by the arguments it made in its Memorandum in Support of Motion for Summary Judgment, Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment, and Memorandum in Opposition to Defendants' Motion for Reconsideration in addition to oral argument made at trial. (R. 440-528, 593-598, 717-724; T. 258-274)

III. Whether the trial court erred in determining that Brookside was not the prevailing party upon the no cause dismissal of the Peebles' claims under the

Mobile Home Park Residency Act requiring an award of attorneys' fees and costs to Brookside? (R. 1285-1287) The trial court's interpretation of statute is a question of statutory construction which is reviewed under a "'correction of error'" standard. On appeal, the trial court's legal conclusions are given no deference but are reviewed for correctness Brown & Root Indus. Serv. v. Industrial Comm'n, 947 P.2d 671, 675 (Utah 1997); C. T. v. Johnson, 977 P.2d. 479, 480 (Utah 1999); Rushton v. Salt Lake County, 977 p.2d. 1201, 1203 (Utah 1999). Brookside preserved this issue for appeal before the trial court by the arguments it made in its Affidavit of Fees and Memorandum of Costs and Reply Memorandum in Support of Motion for Allowance of Attorney's Fees and Court Costs in addition to oral argument made at trial. (R. 1102-1160, 1228-1236; T. 236, 719)

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES

The constitutional provisions, statutes, ordinances and rules which pertain to this appeal are fully set forth in the addenda hereto where not fully set forth in the body of this brief. The *Mobile Home Park Residency Act*, located at Utah Code Annotated Sections 57-16-1 through 57-16-15.1 , and *Unlawful Detainer by Tenant for Term Less Than Life*, located at Utah Code Annotated Section 78-36-3, are fully set forth in the addenda hereto.

STATEMENT OF THE CASE

On or about May 5, 1996, Brookside filed an Amended Complaint against the Peebles alleging unlawful detainer by the Peebles of space #100 of Brookside's mobile home park. (R. 17-33) On or about January 2, 1997, the Peebles filed a

Counterclaim against Brookside alleging that, among other claims, Brookside had violated the *Mobile Home Park Residency Act* by unreasonably withholding approval of prospective purchasers of the Peebles' mobile home. (R. 149-154) On or about August 8, 1997, Brookside filed a Motion for Summary Judgment arguing that because the Peebles did not have a lease with Brookside, the Peebles were therefore not residents under the *Mobile Home Park Residency Act,* and that the Peebles were in unlawful detainer of space #100. (R. 529-530) On or about October 23, 1997, the Court granted Brookside's Motion, holding that Brookside's notice was sufficient under Utah law for unlawful detainer, that the Peebles had surrendered any lease they had with Brookside by the subsequent execution of leases between Brookside and the series of buyers of the Peebles' mobile home, and that the Peebles' counterclaims failed as they were premised upon a lease with Brookside. (R 616-620)

On October 28, 1997, the Peebles filed a Notice of Appeal of the trial court's summary judgment in favor Brookside. (R. 623-624) On November 17, 1997, the Peebles filed a Motion for Reconsideration requesting that the trial court reconsider the summary judgment in favor of Brookside. (R. 687-688) The Peebles filed two Affidavits of Sam Peebles dated November 17, 1997 and November 18, 1997 simultaneously with their Motion for Reconsideration that contradicted Sam Peeble's previous deposition testimony. (R. 701-707) On or about February 20, 1998, with an Order dated March 18, 1998, the trial court overturned its prior decision holding that there was a genuine issue of material fact as to whether the

Peebles knew there were leases between Brookside and purchasers of the Peebles' mobile home resulting in a surrender of the Peebles' lease. (R. 744-747)

Commencing October 1, 1998, the matter was tried before a jury. The trial court dismissed Brookside's claim of unlawful detainer at the conclusion of Brookside's case, holding that Brookside was required to give the Peebles a 15 day notice to quit under the *Mobile Home Park Residency Act* as opposed to a 5 day notice to quit for unlawful detainer under Utah law. (R. 1292-1294) The jury later denied the Peebles' claims against Brookside. (R. 1292-1294) In so doing, the jury determined that the Peebles had no lease with Brookside and the Peebles were therefore not entitled to relief under the *Mobile Home Park Residency Act* against Brookside. (R. 1292-1294) On motions of both Brookside and the Peebles, the Court denied both parties' attorneys' fees and costs. (R. 1285-1287)

This appeal stems from the trial court's February 1998 overturn of its previous Decision granting Brookside summary judgment dated October 23, 1997 (R. 744-747), the trial court's dismissal of Brookside's claims at trial for unlawful detainer (R. 1292-1294), and the trial court's denial of Brookside's Motion for Allowance of Attorney's Fees and Court Costs under the *Mobile Home Park Residency Act* when Brookside prevailed against the Peebles' claims under the Act (R. 1285-1287).

STATEMENT OF THE FACTS

The Peebles purchased the mobile home occupying space #100 of the Brookside Mobile Home Park (the "Park") in or around December of 1983 and Sam Peebles thereafter entered into a Lease with Brookside Associates ("Assignor"),

a predecessor in interest of Brookside regarding the Park. (T. 325-327, 400-402) In or around November of 1986, the Peebles sold their mobile home to Bud Jones and Barbara Peacock. (T. 175, 177)

After selling their mobile home to Bud Jones and Barbara Peacock, Sam Peebles moved out of the mobile home. (T. 175, 177) Bud Jones and Barbara Peacock then entered into a lease agreement directly with Assignor for the lease of space #100. (T. 178) Upon selling the mobile home to Bud Jones and Barbara Peacock, the Peebles became purchase money lenders and Bud Jones and Barbara Peacock became the residents of space #100. (T. 456-457) After about six months, Bud Jones and Barbara Peacock defaulted on their purchase contract and the Peebles retook possession of the mobile home. (T. 178, 449-450)

Thereafter Kathy Burgess rented the mobile home from the Peebles. (T. 188, 403-406) The Peebles then rented the mobile home to Yolanda Gonzales and Sam Peebles lent money to Yolanda Gonzales for her rental payments to the Park. (T. 187-188) The Peebles then sold the home to Richard Rowley and on one occasion loaned Richard Rowley approximately $1,500 to have a sheriff's lock removed from the mobile home because of eviction proceedings commenced by the Park. (T. 183-184, 413)

In or around August of 1994, Brookside's immediate predecessor in interest, the Alan H. Glover & Bonnie A. Glover Revocable Trust (the "Trust") entered into a contract to purchase the Park from Assignor. (T. 32-33) In connection with the purchase of the Park, the Trust entered into an Assignment of Leases and Deposits

dated December 9, 1994 whereby the Trust acquired from Assignor all of Assignor's right, title and interest to the leases described on a Rent Roll attached to the Assignment of Leases and Deposits. (T. 34-35) The Rent Roll attached to the Assignment of Leases and Deposits listed Richard Rowley as the Resident occupying space #100. (T. 36,60-62) Richard Rowley in fact occupied space #100 at the time of the Trust's purchase of the Park. (T. 81-83) The Peebles were not listed on the Rent Roll. (T. 81-83)

Brookside acquired its interest in the Park from the Trust by deed dated on or about January 4, 1995, and acquired its interest in the lease with Rowley by virtue of an Assignment of Leases dated January 4, 1995. (T. 40-41) The leases acquired by Brookside were identical to those acquired by the Trust from Assignor. (T. 41-42) Again, the Peebles were not identified as residents under any lease and Brookside had no knowledge of Peebles' claimed interest in a mobile home or any claim of a lease within the Park. (T. 41-42)

As noted above, on or about May 1, 1994, prior to Brookside's purchase of the Park, Richard Rowley had entered into a Mobile Home Space Lease Agreement for space #100 of the Park with Assignor, the prior owner of the Park. (T. 82)

Subsequent to Brookside's purchase of the Park, Richard Rowley entered into a second Rental Agreement with Brookside on or about April 1, 1995. (T. 46-47) The April 1995 Rental Agreement listed only Richard Rowley and Dawn Rowley as Residents and further prohibited assignments or subleases. (T. 48) Richard Rowley abandoned the mobile home on or about November of 1995. (T.

496, 507) Thereafter, on or about the 29th of November, 1995, Brookside served the Peebles as lenders, by registered mail, a Notice pursuant to Section 57-16-9, *Utah Code Annotated*, specifying Sam Peebles as the lienholder of the mobile home and indicating that as the lienholder of record, they were primarily liable to Brookside for all rents accruing after ten (10) days following receipt of the notice. (T. 504) Subsequent to receiving notice as lender, the Peebles began paying the rent for space #100 which Brookside accepted believing the Peebles were lenders. (T. 508)

On or about December 27, 1995, Sam Peebles was advised that certain repairs would need to be made to the trailer for it to remain in the Park if sold to a new homeowner. (T. 50-54, 507-508) In March of 1996, the Park manager, Jim Prentice, informed Sam Peebles that Sam Peebles would need to come by the manager's office and sign a new lease with the current owner of the Park. (T. 458-459) Sam Peebles refused to come to the manager's office to sign a new lease. (T. 458-459)

Brookside served upon the Peebles by posting upon the mobile home a Notice to Quit on April 13, 1996. (R. 31-32)[1] Such notice required the Peebles to remove their mobile home from the Park within five (5) days pursuant to the statutory requirements of unlawful detainer under Utah law. (R. 31-32)

---

[1]Such 5 day notice was served after Brookside received a "note" from the court that the notice was required as a prerequisite to the action. Brookside served the notice and then filed its Amended Complaint.

On or about May 5, 1996, Brookside filed an Amended Complaint alleging unlawful detainer by the Peebles. (R. 17-33) At the time of filing of the complaint, the mobile home was in a state of disrepair to the point that it did not satisfy municipal code requirements of the City of West Jordan. (T. 145-146, 214-219)

On or about January 2, 1997, the Peebles filed a Counterclaim against Brookside alleging that, among other claims, Brookside had violated the *Mobile Home Park Residency Act* by unreasonably withholding approval of prospective purchasers of the Peebles' mobile home. (R. 149-154)

On August 8, 1997, Brookside filed its Motion for Summary Judgment arguing that because the Peebles did not have a lease with Brookside, that the Peebles were lenders, not residents under the *Mobile Home Park Residency Act*, and that the Peebles were in unlawful detainer. (R. 529-530) By Decision dated October 23, 1997, the Court granted Brookside's Motion, holding that Brookside's notice was sufficient for unlawful detainer under Utah law, that the Peebles had no lease with Brookside by virtue of the surrender of any lease caused by execution of leases between the Park and the series of purchasers of the Peebles' mobile home, the Peebles' refusal to enter into a written lease as required by the *Mobile Home Park Residency Act*, and that the Peebles' counterclaims failed as they were premised upon a lease with Brookside. (R. 616-620)

The Peebles filed a Notice of Appeal dated October 28, 1997 and also filed a Motion for Reconsideration dated November 17, 1997. (R. 623-624) The Peebles filed two Affidavits of Sam Peebles dated November 17, 1997 and

November 18, 1997 simultaneously with their Motion for Reconsideration that contradicted Sam Peebles' earlier deposition testimony. (R. 701-707) By Notice of Decision dated February 20, 1998, and Order dated March 18, 1998, the Court incorrectly overturned the prior decision holding that there was a genuine issue of material fact as to whether the Peebles knew there were leases between the Park and the series of purchasers of the Peebles' mobile home resulting in a surrender of the Peebles' lease. (R. 744-747)

Commencing October 1, 1998, the matter was tried before a jury. However, the trial court dismissed Brookside's claim of unlawful detainer at the conclusion of Brookside's case, holding that Brookside was required to give a 15 day notice to the Peebles under the *Mobile Home Park Residency Act* as opposed to a 5 day notice for unlawful detainer. (R. 1292-1294) The jury later held no cause of action regarding the counterclaims of the Peebles. (R. 1292-1294) In special jury verdicts, the jury found that Brookside had no lease with the Peebles and that Brookside had not unreasonably withheld its consent to prospective purchasers of the Peebles' mobile home in violation of the *Mobile Home Park Residency Act.* (R. 1292-1294) On Motion of both the Peebles and Brookside, the Court denied both parties' claims for attorney's fees and costs. (R. 1285-1287)

This appeal stems from the trial court's February 1998 overturn of its previous Decision dated October 23, 1997 granting Brookside Summary Judgment (R. 744-747), the trial court's dismissal of Brookside's claims at trial for unlawful detainer (R. 1292-1294), and the trial court's denial of Brookside's Motion for Allowance of

Attorney's Fees and Costs under the *Mobile Home Park Residency Act* when Brookside prevailed against the Peebles' claims under the Act (R. 1285-1287).

SUMMARY OF THE ARGUMENT

The trial court erred in overturning its Decision dated October 23, 1997, granting Brookside Summary Judgment because the trial court was precluded from considering the Affidavits of Sam Peebles dated November 17, 1997 and November 18, 1997 due to their contradiction of the earlier deposition testimony of Sam Peebles. The Peebles attempted to create an issue of fact in their Motion for Reconsideration by filing two self-serving affidavits of Sam Peebles which contradicted his earlier deposition of testimony. The trial court committed reversible error when it overturned its decision by considering the Affidavits of Sam Peebles. Even if the trial court was correct in considering the affidavits, Brookside purchased the Park with no actual or constructive notice of a lease with Sam Peebles and is therefore a bona fide purchaser and not subject to any lease Sam Peebles had with a previous owner of the Park.

The trial court erred in determining that Brookside was required to provide the Peebles 15-day notice under the *Mobile Home Park Residency Act* as opposed to 5-day notice for unlawful detainer. Due to the Peebles lack of a lease with Brookside, the Peebles were not tenants and Brookside was compelled to pursue unlawful detainer against the Peebles because the *Mobile Home Park Residency Act* did not apply in evicting the Peebles. Brookside was entitled to pursue its claim of unlawful detainer against the Peebles pursuant to Utah law regarding unlawful

detainer. The trial court committed reversible error when it dismissed Brookside's claim of unlawful detainer.

The trial court erred in determining that Brookside was not the prevailing party upon the no cause dismissal of the Peebles' claims premised upon the *Mobile Home Park Residency Act*. The act requires an award of attorneys' fees and costs to the prevailing party when claims are pursued under the act. Brookside is entitled to attorney's fees upon prevailing against the Peebles for their claims under the Act. The trial court committed reversible error when it denied Brookside's recovery of attorney's fees and costs.

ARGUMENT

I. THE TRIAL COURT ERRONEOUSLY OVERTURNED ITS DECISION GRANTING BROOKSIDE SUMMARY JUDGMENT.

The trial court erroneously overturned its earlier decision granting Brookside Mobile Home Park, Ltd. ("Brookside") summary judgment when it considered the Affidavits of Defendant Samuel B. Peebles ("Sam Peebles") which contradicted Sam Peebles' previous deposition testimony. The Defendants Sam Peebles and Harold Boyd Peebles (together "the Peebles") attempted to create an issue of fact through self-serving affidavits that contradicted Sam Peebles' previous deposition testimony and should not have been considered by the trial court. Even if the trial court was correct in considering the affidavits, Brookside purchased the Brookside Mobile Home Park (the "Park") with no actual or constructive notice of a lease with Sam Peebles and is therefore a bona fide purchaser and not subject to any lease

Sam Peebles had with a previous owner of the Park. The original decision of the trial court granting Brookside's Motion for Summary Judgment should be reinstated and this matter remanded for calculation of treble damages recoverable by Brookside under Utah law for unlawful detainer.

A. The Sam Peebles' Affidavits Submitted in Opposition to Brookside's Motion for Summary Judgment Should Not Have Been Considered by the Trial Court.

A party cannot take a clear position in a deposition, that is not modified on cross-examination, and then raise an issue of fact by his own affidavit which contradicts his deposition. See Franks v. Nimmo, 796 F.2d 1230, 1237 (10th Cir. 1986); Webster v. Sill, 675 P.2d 1170, 1172-73 (Utah 1983). Though a court should not weigh evidence in a summary judgment proceeding, "when a party takes a clear position in a deposition that is not modified on cross-examination, he may not thereafter raise an issue of fact by his own affidavit which contradicts his deposition." Id. The only exception to this rule mandates that the party must "provide an explanation of the discrepancy." Id. at 1173. "A contrary rule would undermine the utility of summary judgment as a means of screening out sham issues of fact." Id.

The trial court's overturn of its earlier decision granting Brookside summary judgment is reviewed without deference to the trial court's determination because summary judgment deals only with questions of law. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. In reviewing a grant of summary

judgment, the facts are considered in the light most favorable to the nonmoving party. "[W]e may affirm a grant of summary judgment on any ground available to the trial court." Parker v. Dodgion, 971 P.2d, 496, 497 (Utah 1998); Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993).

In the Peebles' Memorandum in Support of Motion for Reconsideration, the Peebles first attempt to raise a genuine issue of whether Sam Peebles knew of the existence of a lease between Brookside and Rowley, the most recent purchaser of the Peebles mobile home. (R. 694-700) The Peebles argued that because Sam Peebles was allegedly not aware of the Rowley lease, the Rowley lease did not operate as a surrender of any previously existing Peebles lease. (R. 694-700)

The doctrine of surrender requires only that the Peebles assented to the creation of an estate between Rowley and Brookside.[2] The Peebles assented when they permitted Rowley to occupy their mobile home knowing that Brookside would require a lease agreement from Rowley. "[W]hen a tenant surrenders the premises to a landlord before a lease term expires and the landlord accepts that surrender, the tenant is no longer in privity of estate with the Landlord." Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896, 900 (Utah 1989). This "rule of surrender implied by law is so well established as to be without dispute." Automatic Gas

---

[2] [A] surrender of a lease is implied by law when another estate is created by the reversioner or remainderman, with the assent of the tenant, that is incompatible with the existing term. Thus, as a general rule, when a new lease of the premises is taken by the lessee from the lessor for the whole or a part of the term embraced in the former one, there is said to be a surrender in law because the giving of a new lease necessarily implies a surrender of the old one.

49 AM. JUR. 2d *Landlord and Tenant* at § 252 (1995).

Distributors, Inc. v. State Bank of Green River, 817 P.2d 441, 443 (Wyo. 1991). It is wholly immaterial that Sam Peebles did not realize that by permitting Rowley to occupy the mobile home and enter into a lease agreement with Brookside, the Peebles would be surrendering his lease. Moreover, the doctrine of surrender simply does not require that Sam Peebles, to the extent he actually was a tenant, "knowingly or consentually [sic] surrendered [his] lease" in order for the surrender to be effective (Sam Peebles Supplemental Affidavit at ¶13).

A lease agreement between a Landlord and a Tenant creates an estate in land. It is impossible to convey an estate which is incompatible with a pre-existing estate. The creation of the second relationship with the assent of the prior tenant necessarily terminates the relationship between the Landlord and the prior tenant. Here, where there is no dispute that Sam Peebles permitted Rowley to occupy the mobile home fully knowing that Brookside would require a lease agreement from Rowley, there was as a matter of law a surrender of any preexisting interest and estate of Sam Peebles.

In support of the argument that Sam Peebles had no knowledge of the Rowley lease, the Peebles offer a Supplemental Affidavit of Sam Peebles wherein he claims that he had no knowledge of a lease between Brookside and Richard Rowley. (R. 701-707) This affidavit is inconsistent with deposition testimony offered by Sam Peebles, and was therefore inadmissible and inappropriately considered by the trial court.

During the deposition of Sam Peebles taken May 1, 1997, the following colloquy transpired between Brookside's counsel and Sam Peebles referring specifically to the Peebles' "renters" including Rowley:

> Q. Okay. Each time these people leased the trailer from you, do you know if they made an application with the park to lease this?
>
> A. Yes, they did. They were supposed to.
>
> Q. Okay. And they would have gone through an application process?
>
> A. Yep.
>
> Q. They would have to sign a lease agreement?
>
> A. Yep.

(Deposition of Sam Peebles at 21-22). In his deposition, Sam Peebles clearly testified that he is aware that his renters entered into lease agreements with Brookside. Therefore, his affidavit testimony that he had no knowledge of Rowley's lease is inadmissible and should be stricken.

Due to the in admissibility of the Supplemental Affidavits of Sam Peebles, the original decision by the trial court to grant Brookside summary judgment should be reinstated and this matter remanded for calculation of treble damages recoverable by Brookside under Utah law for unlawful detainer.

B. Brookside was a Bona Fide Purchaser of the Park who Purchased Without Actual or Constructive Notice of the Peebles' Alleged Lease.

Even if the trial court was correct in considering the Supplemental Affidavits of Sam Peebles, Brookside was a bona fide purchaser of the Park. "A bona fide

purchaser is one who takes without actual or constructive notice of facts sufficient to put him on notice of the complainant's equity." Grahn v. Gregory, 800 P.2d 320, 328 (Utah App. 1990) (quoting Blodgett v. Marser, 590 P.2d 298, 303 (Utah 1978). Brookside had no knowledge at the time it purchased the Park that the Peebles were the owners of the mobile home located at space #100 or that they might claim the existence of a lease.

"The essential time to measure knowledge is at the time of the actual sale." Grahn v. Gregory, 800 P.2d 320, at 328. At the time of the sale, Richard Rowley was the occupant of the subject mobile home. Richard Rowley had signed a lease with Plaintiff's predecessor as the resident. (T. 82). Richard Rowley was listed as the resident of the subject mobile home on the Rent Roll attached to the Assignment of Leases and Deposits. (T. 36, 60-62). Because Brookside was a bona fide purchaser who took the Park without actual or constructive notice of the Peebles' claims as residents, Brookside is not bound by any alleged contract entered into between the Peebles and a prior owner of the Park. Id. This issue alone is sufficient basis to determine there was no contract between Brookside and the Peebles and to uphold the trial court's summary judgment in favor of Brookside. The original summary judgment should be reinstated and this matter remanded for calculation of treble damages recoverable by Brookside under Utah law for unlawful detainer.

C. The Trial Court's Original Decision Granting Brookside's Motion for Summary Judgment Should be Reinstated.

As found in the trial court's original decision granting Brookside summary judgment and later held by the jury at trial, the Peebles never entered into a lease agreement, either written or verbal, with Brookside. (R. 1292-1294) Any such contract with Brookside's predecessor was extinguished as a matter of law when the Peebles entered into contracts with various individuals to sell the mobile home by the doctrine of surrender. At such time, the Peebles' interest in the mobile home was transformed into that of a lender or lienholder. Furthermore, Brookside was a bona fide purchaser of the Park and not bound by any lease the Peebles had with a previous owner of the Park. Without a valid lease agreement between Brookside and the Peebles, the Peebles were not tenants and Brookside was compelled to pursue unlawful detainer against the Peebles because the *Mobile Home Park Residency Act* did not apply in evicting the Peebles. There are no remaining genuine issues of material fact to dispute that the Peebles are guilty of unlawful detainer pursuant to Utah Code Annotated Section 78-36-3. Consequently, Brookside's summary judgment should be reinstated and this matter remanded for calculation of treble damages recoverable by Brookside for the Peebles' unlawful detainer.

II. THE TRIAL COURT ERRED IN APPLYING THE UTAH MOBILE HOME PARK RESIDENCY ACT TO BROOKSIDE'S CAUSE OF ACTION INSTEAD OF UNLAWFUL DETAINER.

The trial court erred in dismissing Brookside's claims after presentation of Brookside's case during the jury trial of this matter. The trial court dismissed Brookside's claim for unlawful detainer because Brookside had not served the Peebles with a 15-day notice to quit as required under the *Mobile Home Park Residency Act*. The trial court's action is especially nonsensical in that the jury later found under special verdict instructions that no lease existed between Brookside and the Peebles. With no lease between Brookside and the Peebles, the *Mobile Home Park Residency Act* does not apply in evicting the Peebles and Brookside is required to pursue a claim of unlawful detainer against the Peebles. (R. 1292-1294)

The *Mobile Home Park Residency Act* was enacted by the Utah legislature with the intent to "provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks." Utah Code Ann. § 57-16-2. The legislature sought to provide "speedy and adequate" remedies for park owners while protecting tenants from actual or constructive eviction due to the "high cost of moving mobile homes." Id.

Under the *Mobile Home Park Residency Act*, a resident is defined as "an individual who leases or rents space in a mobile home park." Utah Code Ann. § 57-16-3(3). The Act further requires that "the lease of mobile home space shall be

written and signed by the parties." Utah Code Ann. § 57-16-4(2). The Act further includes language limiting the language contained in mobile home leases, limiting the causes for termination of such leases, and providing for a unique eviction procedure that is different than the eviction procedure for other forms of real property interests. Utah Code Ann. §§ 57-16-4, -5, -6, -7.5, and -8.

The trial court's interpretation of statute is a question of statutory construction which is reviewed under a "'correction of error'" standard. On appeal, the trial court's legal conclusions are given no deference but are reviewed for correctness Brown & Root Indus. Serv. v. Industrial Comm'n, 947 P.2d 671, 675 (Utah 1997); C. T. v. Johnson, 977 P.2d. 479, 480 (Utah 1999); Rushton v. Salt Lake County, 977 p.2d. 1201, 1203 (Utah 1999).

Brookside did not have a lease agreement with the Peebles. (R. 1292-1294) The Peebles were therefore not residents of the Park. As nonresidents, the Peebles refusal to vacate space #100 of the Park was not governed by the *Mobile Home Park Residency Act.* Without a written lease agreement between Brookside and the Peebles, Brookside was not entitled to evict the Peebles under the *Mobile Home Park Residency Act* but compelled to pursue an action for unlawful detainer against the Peebles. In fact, the trial court instructed Brookside to serve a five day notice to quit under unlawful detainer when Brookside commenced this action against the Peebles. (See Footnote No. 1 at page 8.)

The elements of unlawful detainer are located in Section 78-36-3 of the Utah Code Annotated which provides:

(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

. . . .

(b) when, having leased real property for an indefinite time with monthly or other periodic rent reserved;

. . . .

(ii) in cases of tenancies at will, where he remains in possession of the premises after the expiration of a notice of not less than five days;

Absent a valid residency lease with the Brookside, the Peebles are tenants at will. In the present case, as a tenant at will, the Peebles' right to possession was subject to termination by Brookside upon five days' notice, Section 78-36-3(11)(b). Brookside served the Peebles with a Notice to Quit on April 13, 1996; however, the Peebles refused to vacate space #100. Consequently, Brookside is entitled to treble damages for the Peebles' unlawful detainer for periods subsequent to April 13, 1996.

After first granting Brookside's Motion for Summary Judgment and then overturning its decision, the trial court dismissed Brookside's claim of unlawful detainer for failure to comply with the notice requirements of the *Mobile Home Park Residency Act*. Subsequently at trial in October of 1998, the jury held in a special jury verdict form that no lease existed between Brookside and the Peebles. Inconsistent with the jury ruling, the trial court had dismissed the claims of Brookside because it had issued a five-day notice, as required under unlawful detainer, rather than a fifteen-day notice required by the *Mobile Home Park Residency Act*. If there is no lease, the *Mobile Home Park Residency Act* does not apply and Brookside should prevail against the Peebles regarding its claim of

unlawful detainer. The trial court's error in applying the notice standards of the *Mobile Home Park Residency Act* rather than unlawful detainer is error correctable by this Court.

Though not mentioned in the final Judgment in this matter, the trial court also dismissed Harold Boyd Peebles as a defendant at trial. (T. 261) Harold Boyd Peebles should be found joint and severally liable for unlawful detainer due to his joint ownership of the mobile home located at space #100 of the Park and the failure of the Peebles to timely plead the affirmative defense of nominal defendant regarding Harold Peebles. The Peebles' Amended Answer did not contain a "nominal defendant" defense for Harold Peebles. (R. 121-126) The Peebles never filed a motion to dismiss on the basis that Harold Peebles was only a "nominal defendant." Instead, the Peebles admitted in their Amended Answer that Harold Peebles was a defendant to this action (R. 121-126). Harold Peebles also brought numerous counterclaims against Brookside. (R. 149-154) As a co-owner of the mobile home, he is also guilty of unlawful detainer and is therefore jointly and severally liable with Sam Peebles for the damages incurred by Brookside.

Pursuant to Section 78-36-10 of the Utah Code Annotated, Brookside is entitled to the recovery of treble damages from the Peebles. Brookside respectfully requests this court to remand this matter to the trial court for calculation of treble damages against the Peebles for unlawful detainer.

III. THE TRIAL COURT ERRED IN DENYING BROOKSIDE ATTORNEYS' FEES AND COSTS WHEN IT PREVAILED AGAINST THE PEEBLES' CLAIMS UNDER THE UTAH MOBILE HOME PARK RESIDENCY ACT.

The trial court erred in denying Brookside's attorneys' fees and costs in this action. Brookside is entitled to attorneys' fees in this action because the Peebles alleged in their Counterclaim, causes of action for violation of section 57-16-4(4) of the *Mobile Home Park Residency Act*. Because Brookside successfully defended against the Peebles's counterclaim founded on the *Utah Mobile Home Park Residency Act*, Brookside is entitled to its attorney's fees incurred in this action pursuant to Section 57-16-8 of the Act.

> If a resident elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pendency of the action shall be paid into the court according to the current mobile home park payment schedule. Failure of the resident to pay such amounts may, in the discretion of the court, constitute grounds for granting summary judgment in favor of the mobile home park. Upon final termination of the issues between the parties, the court shall order all amounts paid into court paid to the mobile home park. ***The prevailing party is also entitled to court costs and reasonable attorney's fees.***

U.C.A. 57-16-8 (1994) (emphasis added). Brookside is entitled to its court costs and reasonable attorney's fees incurred in this action because, without exception, each and every one of the claims pursued by Peebles at trial were based upon the Peebles' allegation that Brookside violated the *Utah Mobile Home Residency Act* (the "Act").

The trial court's interpretation of statute is a question of statutory construction which is reviewed under a "'correction of error'" standard. On appeal, the trial court's legal conclusions are given no deference but are reviewed for correctness Brown & Root Indus. Serv. v. Industrial Comm'n, 947 P.2d 671, 675 (Utah 1997); C. T. v. Johnson, 977 P.2d. 479, 480 (Utah 1999); Rushton v. Salt Lake County, 977 p.2d. 1201, 1203 (Utah 1999).

In Claim One of the Peebles' Counterclaim, the Peebles asserted that Brookside breached its contract with the Peebles by failing to reasonably approve a prospective purchaser of the Peebles' mobile home. (R. 149-154) In support of its claim at trial, the Peebles attempted to establish the existence of a contract between Brookside and the Peebles in order to (i) bring the contract within the strictures of the Act; and (ii) to establish that the contract had been breached by Brookside's conduct which the Peebles argued was in violation of the Act.

The Peebles' Counterclaim were raised pursuant to the Act. Brookside's Complaint constituted an eviction proceeding. The Peebles' Counterclaim constituted a compulsory counterclaim. As a compulsory counterclaim, the Peebles' Counterclaim was part of the eviction proceeding. Moreover, the language of Section 57-16-8 clearly accounts for the presence of more than one claim in an eviction proceeding. The phrase, "[u]pon final termination of the issues between the parties," assumes that more than one claim can arise in the context of an eviction proceeding, as occurred in this instance. In this case, there was a "termination of the issues between the parties." In that termination, Brookside

prevailed on the claims raised by the Peebles' Counterclaim. The Peebles' claims arose in the context of an eviction proceeding and therefore mandate recovery of attorney's fees and court costs by Brookside.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reinstate the summary judgment of the trial court, determine Brookside has prevailed on its cause of action against the Peebles for unlawful detainer, remand this matter to the trial court for calculation of appropriate treble damages under the applicable statute, and award Brookside Attorneys' fees and costs due under the *Mobile Home Park Residency Act* due to Brookside prevailing against the Peebles regarding the Peebles' claims under the act.

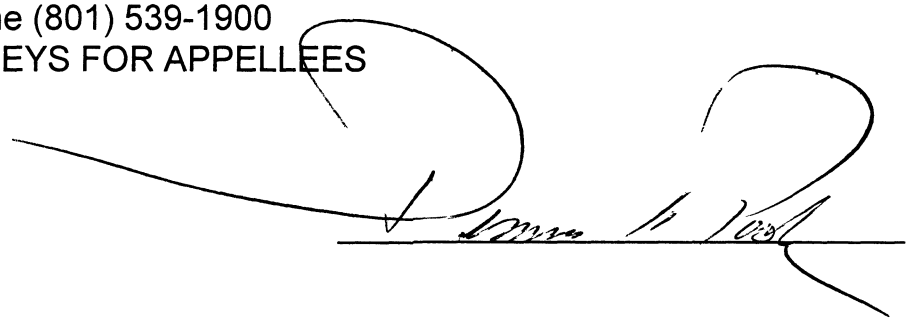
DATED this 4 day of February, 2000.

DENNIS K. POOLE
POOLE, SULLIVAN & ADAMS, L.C.
Attorneys for Appellants

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, U.S. Mail, postage prepaid, two true and correct copies of the foregoing **BRIEF OF APPELLANT** to the following this 14 day of February, 2000:

Russell A. Cline
CRIPPEN & CLINE L.C.
310 South Main Street #1200
Salt Lake City, Utah 84101
Telephone (801) 539-1900
ATTORNEYS FOR APPELLEES



ADDENDUM

Addendum “A”

Mobile Home Park Residency Act, Utah Code Annotated Sections 57-16-1 through 57-16-15.1

Addendum “B”

Unlawful Detainer by Tenant for Term Less Than Life, Utah Code Annotated Section 78-36-3

Addendum “C”

Decision Dated October 23, 197 granting Brookside Summary Judgment

Addendum "D"

Decision Dated January 20, 1998 overturning Summary Judgment

Addendum "E"

Decision Dated February 24, 1999, Denying Attorney's Fees and Court Costs

Addendum "F"

Judgment Dated May 13, 1999

Tab A

CHAPTER 16
MOBILE HOME PARK RESIDENCY

Section
57-16-1. Short title.
57-16-2. Purpose of chapter.
57-16-3. Definitions.
57-16-4. Termination of lease or rental agreement - Required contents of lease - Increases in rents or fees - Sale of homes.
57-16-5. Cause required for terminating lease - Causes - Cure periods - Notice.
57-16-6. Action for lease termination - Prerequisite procedure.
57-16-7. Rules of parks.
57-16-7.5. Payment of rent required after notice - Summary judgment.
57-16-8. Payment of rent and fees during pendency of eviction proceeding.
57-16-9. Lienholder's liability for rent and fees.
57-16-10. Utility service to mobile home parks - Limitation on providers' charges.
57-16-11. Rights and remedies not exclusive.
57-16-12. Waiver of rights and duties prohibited.
57-16-15.1. Eviction proceeding.

57-16-1. Short title.

This act shall be known and may be cited as the "Mobile Home Park Residency Act."

History: L. 1981, ch. 178, § 1.

Meaning of "this act". - The term "This act" in this section means L. 1981, ch. 178, §§ 1 through 12, which enacted §§ 57-16-1 through 57-16-12.

COLLATERAL REFERENCES

Am. Jur. 2d. - 54 Am. Jur. 2d Mobile Homes, Trailer Parks, and Tourist Camps § 1 et seq.

C.J.S. - 39A C.J.S. Health and Environment § 31; 60 C.J.S. Motor Vehicles § 43.

57-16-2. Purpose of chapter.

The fundamental right to own and protect land and to establish conditions for its use by others necessitate that the owner of a mobile home park be provided with speedy and adequate remedies against those who abuse the terms of a tenancy. The high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction. It is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks

and for the owners of mobile home parks.

History: L. 1981, ch. 178, § 2.

COLLATERAL REFERENCES

A.L.R. - Validity of zoning or building regulations restricting mobile homes or trailers to established mobile home or trailer parks, 17 A.L.R.4th 106.

Validity and construction of restrictive covenant prohibiting or governing outside storage or parking of house trailers, motor homes, campers, vans, and the like, in residential neighborhoods, 32 A.L.R.4th 651.

57-16-3. Definitions.

As used in this chapter:

(1) "Mobile home" means a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within the unit, which when erected on a site, may be used with or without a permanent foundation as a family dwelling.

(2) "Mobile home park" means any tract of land on which two or more mobile home spaces are leased, or offered for lease or rent, to accommodate mobile homes for residential purposes.

(3) "Resident" means an individual who leases or rents space in a mobile home park.

(4) "Mobile home space" means a specific area of land within a mobile home park designed to accommodate one mobile home.

(5) "Rent" means charges paid for the privilege of occupying a mobile home space, and may include service charges and fees.

(6) "Service charges" means separate charges paid for the use of electrical and gas service improvements which exist at a mobile home space, or for trash removal, sewage and water, or any combination of the above.

(7) "Fees" means other charges incidental to a resident's tenancy including, but not limited to, late fees, charges for pets, charges for storage of recreational vehicles, charges for the use of park facilities, and security deposits.

(8) "Change of use" means a change of the use of a mobile home park, or any part of it, for a purpose other than the rental of mobile home spaces.

History: L. 1981, ch. 178, § 3.

57-16-4. Termination of lease or rental agreement - Required contents of lease - Increases in rents or fees - Sale of homes.

(1) A mobile home park or its agents may not terminate a lease or rental agreement upon any ground other than as specified in this chapter.

(2) Each agreement for the lease of mobile home space shall be written and signed by the parties. Each lease shall contain at least the following information:

(a) the name and address of the mobile home park owner and any persons authorized to act

for the owner, upon whom notice and service of process may be served;

(b) the type of the leasehold, and whether it be term or periodic;

(c) a full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis;

(d) the date or dates on which the payment of rent, fees, and service charges are due; and

(e) all rules that pertain to the mobile home park which, if broken, may constitute grounds for eviction.

(3) (a) Increases in rent or fees for periodic tenancies shall be unenforceable until 60 days after notice of the increase is mailed to the resident. If service charges are not included in the rent, service charges may be increased during the leasehold period after notice to the resident is given, and increases or decreases in electricity rates shall be passed through to the resident. Increases or decreases in the total cost of other service charges shall be passed through to the resident.

(b) The mobile home park may not alter the date or dates on which rent, fees, and service charges are due unless a 60-day written notice precedes the alteration.

(4) Any rule or condition of a lease purporting to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable. The mobile home park may, however, reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident, but the approval may not be unreasonably withheld. The mobile home park may require proof of ownership as a condition of approval. The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase.

(5) A mobile home park may not restrict a resident's right to advertise for sale or to sell his mobile home. However, the park may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.

(6) A mobile home park may not compel a resident who desires to sell his mobile home, either directly or indirectly, to sell it through an agent designated by the mobile home park.

(7) In order to upgrade the quality of a mobile home park, it may require that a mobile home be removed from the park upon sale if:

(a) the mobile home does not meet minimum size specifications; or

(b) the mobile home is in rundown condition or in disrepair.

History: L. 1981, ch. 178, § 4; 1989, ch. 110, § 1; 1997, ch. 114, § 1; 1997 (1st S.S.), ch. 1, § 1.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, added Subsection (2), redesignating the other subsections accordingly.

The 1997 (1st S.S.) amendment, effective June 20, 1997, deleted former Subsection (2), authorizing termination of a lease under specified conditions, and made related and stylistic changes.

Construction. - Laws 1997 (1st S.S.), ch. 1, § 5 provides: "(1) Upon the effective date of H.B. 1001 (1997 1st Special Session) [ch. 1], any notice to a mobile home resident issued pursuant to Subsection 57-16-4(2) (1997 Annual General Session), which is repealed in this special session, is null and void.

"(2) No cause of action has accrued and no action may be brought under Subsection 57-16-4(2) (1997 Annual General Session), which is repealed in this special session."

57-16-5. Cause required for terminating lease - Causes - Cure periods - Notice.

(1) An agreement for the lease of mobile home space in a mobile home park may be terminated by mutual agreement or for any one or more of the following causes:

(a) failure of a resident to comply with a mobile home park rule:

(i) relating to repair, maintenance, or construction of awnings, skirting, decks, or sheds for a period of 60 days after receipt of a notice of noncompliance from the mobile home park; or

(ii) relating to any other park rule for a period of seven days after receipt of notice of noncompliance from the mobile home park, except relating to maintenance of a resident's yard and space, the mobile home park may elect not to proceed with the seven-day cure period and may provide the resident with written notice as provided in Subsection (2);

(b) repeated failure of a resident to abide by a mobile home park rule, if the original notice of noncompliance states that another violation of the same or a different rule might result in forfeiture without any further period of cure;

(c) behavior by a resident which substantially endangers the security and health of the other residents or threatens the property in the park;

(d) nonpayment of rent, fees, or service charges;

(e) a change in the land use or condemnation of the mobile home park or any part of it.

(2) If the mobile home park elects not to proceed with the seven-day cure period in Subsection (1)(a)(ii), a 15-day notice shall:

(a) state that if the resident does not perform his duties or obligations under the lease agreement or rules of the mobile home park within 15 days, the mobile home park may enter onto the resident's space and cure any default;

(b) state the expected reasonable cost of curing the default;

(c) require the resident to pay all costs incurred by the mobile home park to cure the default by the first day of the month following receipt of a billing statement from the mobile home park;

(d) state that the payment required under Subsection (2)(b) shall be considered additional rent; and

(e) state that the resident's failure to make the payment required by Subsection (2)(b) in a timely manner shall be a default of the resident's lease and shall subject the resident to all other remedies available to the mobile home park for a default, including remedies available for failure to pay rent.

History: L. 1981, ch. 178, § 5; 1997, ch. 114, § 2; 1997 (1st S.S.), ch. 1, § 2.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, designated the former introductory paragraph as Subsection (1); subdivided and redesignated former Subsection (1) as (1)(a) and (1)(a)(ii); in Subsection (1)(a)(ii) substituted "seven days" for "15 days" and added the language beginning "except relating to maintenance"; redesignated former Subsections (2) to (5) as (1)(b) to (1)(e); and added Subsections (1)(a)(i) and (2).

The 1997 (1st S.S.) amendment, effective June 20, 1997, deleted "during its term" after "may be terminated" in Subsection (1) and made stylistic changes.

NOTES TO DECISIONS

Repeated violations.

Leases for mobile home park spaces may be terminated without any additional cure period if the original notice of noncompliance includes language to that effect. Crescentwood Village, Inc. v. Johnson, 909 P.2d 1267 (Utah Ct. App. 1995).

COLLATERAL REFERENCES

A.L.R. - Retaliatory eviction of tenant for reporting landlord's violation of law, 23 A.L.R.5th 140.

Validity, construction, and application of mobile home eviction statutes, 43 A.L.R.5th 705.

57-16-6. Action for lease termination - Prerequisite procedure.

A legal action to terminate a lease based upon a cause set forth in Section 57-16-5 may not be commenced except in accordance with the following procedure:

(1) Before issuance of any summons and complaint, the mobile home park shall send or serve written notice to the resident or subtenant:

(a) by delivering a copy of the notice personally;

(b) by sending a copy of the notice through registered or certified mail addressed to the resident or subtenant at his place of residence;

(c) if the resident or subtenant is absent from his place of residence, by leaving a copy of the notice with some person of suitable age and discretion at his residence and sending a copy through the mail addressed to the resident or subtenant at his place of residence; or

(d) if a person of suitable age or discretion cannot be found, by affixing a copy of the notice in a conspicuous place on the resident's or subtenant's mobile home and also sending a copy through the mail addressed to the resident or subtenant at his place of residence.

(2) The notice shall set forth the cause for the notice and, if the cause is one which can be cured, the time within which the resident has to cure. The notice shall also set forth the time after which the mobile home park may commence legal action against the resident if cure is not effected, as follows:

(a) In the event of failure to abide by a mobile home park rule, the notice shall provide for a cure period as provided in Subsections 57-16-5(1)(a) and (2), except in the case of repeated violations and, shall state that if a cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.

(b) If the resident commits repeated violations of a rule, a summons and complaint may be issued three days after a notice is served.

(c) If a resident behaves in a manner that substantially endangers the well-being or property of other residents, eviction proceedings may commence immediately.

(d) If a resident does not pay rent, fees, or service charges, the notice shall provide a five-day cure period and, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction

proceedings may be initiated immediately.

(e) If there is a planned change in land use or condemnation of the park, the notice shall provide that the resident has 90 days after receipt of the notice to vacate the mobile home park if no governmental approval or permits incident to the planned change are required, and if governmental approval and permits are required, that the resident has 90 days to vacate the mobile home park after all permits or approvals incident to the planned change are obtained.

(3) If the planned change in land use or condemnation requires the approval of a governmental agency, the mobile home park, in addition to the notice required by Subsection (2)(e), shall send written notice of the date set for the initial hearing to each resident at least seven days before the date scheduled for the initial hearing.

(4) Regardless of whether the change of use requires the approval of any governmental agency, if the resident was not a resident of the mobile home park at the time the initial change of use notice was issued to residents the owner shall give notice of the change of use to the resident before he occupies the mobile home space.

(5) (a) Eviction proceedings commenced under this chapter and based on causes set forth in Subsections 57-16-5(1)(a), (b), and (e) shall be brought in accordance with the Utah Rules of Civil Procedure and shall not be treated as unlawful detainer actions under Title 78, Chapter 36, Forcible Entry and Detainer. Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1)(c) and (d) may, at the election of the mobile home park, be treated as actions brought under this chapter and the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer.

(b) If unlawful detainer is charged, the court shall endorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall not be less than five days or more than 20 days from the date of service.

History: L. 1981, ch. 178, § 6; 1987, ch. 92, § 81; 1989, ch. 110, § 2; 1997, ch. 114, § 3; 1997 (1st S.S.), ch. 1, § 3.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, in Subsection (2)(a) deleted "15-day" before "cure period" and added the references thereafter; in Subsection (2)(d) substituted "five-day cure period" for "three-day cure period"; and in Subsection (5) added "Forcible Entry and Detainer" twice and updated all the references.

The 1997 (1st S.S.) amendment, effective June 20, 1997, subdivided Subsection (5) and in Subsection (5)(a) deleted a reference to § 57-16-4(2) from the first code citation.

57-16-7. Rules of parks.

(1) (a) A mobile home park may promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park. No change in rule that is unconscionable is valid.

(b) No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least 60 days after its promulgation. Each resident, as a condition precedent to such rule being in effect, shall be provided with a copy of each new or amended rule that does not appear in their lease agreement.

(c) For 30 days after the mobile home park proposes amendments to the mobile home park rules, the mobile home park shall allow residents, individually or through a representative of a group of residents, the opportunity to meet with the mobile home park management about the proposed amendments. The meetings shall be held within 15 days after receipt of written request for the meeting by the residents or the representative.

(2) A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.

(3) No mobile home park may charge an entrance fee, exit fee, nor installation fee, but reasonable landscaping and maintenance requirements may be included in the mobile home park rules. The resident is responsible for all costs incident to connection of the mobile home to existing mobile home park facilities and for the installation and maintenance of the mobile home on the mobile home space.

(4) Nothing in this section shall be construed to prohibit a mobile home park from requiring a reasonable initial security deposit.

History: L. 1981, ch. 178, § 7; 1997, ch. 114, § 4.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, divided Subsection (1) adding the (a) and (b) designations and added Subsection (1)(c).

57-16-7.5. Payment of rent required after notice - Summary judgment.

(1) (a) Any resident shall continue to pay the mobile home park all rent required by the lease after having been served with any notice pursuant to this chapter, except a notice for nonpayment of rent.

(b) In cases not involving payment of rent, the mobile home park may accept rent without waiving any rights under this chapter.

(2) If the resident fails to pay rent, the mobile home park shall be entitled to summary judgment for:

(a) the rent owed;

(b) termination of the lease; and

(c) restitution of the premises.

(3) The summary judgment as provided in Subsection (2) shall be granted even if a five-day notice to pay or quit was not served, so long as another appropriate notice under this chapter has been served.

History: C. 1953, 57-16-7.5, enacted by L. 1997, ch. 114, § 5.

Effective Dates. - Laws 1997, ch. 114 became effective on May 5, 1997, pursuant to Utah Const., Art. VI, Sec. 25.

57-16-8. Payment of rent and fees during pendency of eviction proceeding.

If a resident elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pendency of the action shall be paid into court according to the current mobile home park payment schedule. Failure of the resident to pay such amounts may, in the discretion of the court, constitute grounds for granting summary judgment in favor of the mobile home park. Upon final termination of the issues between the parties, the court shall order all amounts paid into court paid to the mobile home park. The prevailing party is also entitled to court costs and reasonable attorney's fees.

History: L. 1981, ch. 178, § 8.

NOTES TO DECISIONS

Attorney fees.

Defendant residents who prevailed in an eviction suit did not waive their claim to attorney fees where they raised the claim five days after the trial, but before the entry of final judgment. Meadowbrook, LLC v. Flower, 959 P.2d 115 (Utah 1998).

COLLATERAL REFERENCES

Utah Law Review. - Attorney's Fees in Utah, 1984 Utah L. Rev. 553.

57-16-9. Lienholder's liability for rent and fees.

Notwithstanding the provisions of Section 38-3-2 and Section 70A-9-317, the lienholder of record of a mobile home is primarily liable to the mobile home park owner or operator for rent and service charges if a mobile home is not removed within 10 days after receipt of written notice that a mobile home has been abandoned or that a writ of restitution has been issued. The lienholder, however, is only liable for rent that accrues after receipt of such notice.

History: L. 1981, ch. 178, § 9.

57-16-10. Utility service to mobile home parks - Limitation on providers' charges.

Local water, sewer, and sanitation entities, including those administered by municipalities and counties which provide water, sewer, or garbage collection services shall not receive a greater percentage net return from supplying a mobile home park than said entity receives from other residential customers. The net return is determined by taking into consideration the costs of maintenance and depreciation of the mobile home park facilities and all savings on administrative costs, including cost of billing residents.

History: L. 1981, ch. 178, § 10.

57-16-11. Rights and remedies not exclusive.

The rights and remedies granted by this chapter are cumulative and not exclusive.

History: L. 1981, ch 178, § 11.

57-16-12. Waiver of rights and duties prohibited.

No park or resident may agree to waive any right, duty, or privilege conferred by this chapter.

History: L. 1981, ch. 178, § 12.

57-16-15.1. Eviction proceeding.

(1) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1), (2), and (5), and eviction proceedings commenced under this chapter based on causes of action set forth in Subsections 57-16-5(3) and (4), where a landlord elects to bring an action under this chapter and not under the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer, shall comply with the following:

(a) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff may:

(i) include an order of restitution of the premises; and

(ii) declare the forfeiture of the lease or agreement.

(b) The jury, or the court if the proceedings are tried without a jury or upon the defendant's default, shall assess the damages resulting to the plaintiff from any of the following:

(i) waste of the premises during the resident's tenancy, if waste is alleged in the complaint and proved; and

(ii) the amount of rent due.

(c) If the lease or agreement provides for reasonable attorneys' fees, the court shall order reasonable attorneys' fees to the prevailing party.

(d) Whether or not the lease or agreement provides for court costs and attorneys' fees, if the proceeding is contested, the court shall order court costs and attorneys' fees to the prevailing party.

(e) Except as provided in Subsection (1)(f), after judgment has been entered under this section, judgment and restitution may be enforced no sooner than 15 days from the date the judgment is entered. The person who commences the action shall mail the judgment to the lease premises by registered mail within five days of the date the judgment is entered.

(f) If a resident tenders to the mobile home park postjudgment rent, in the form of cash, cashier's check, or certified funds, then restitution may be delayed for the period of time covered by the postjudgment rent, which time period shall not exceed 15 days from the date of the judgment unless a longer period is agreed to in writing by the mobile home park.

(2) Eviction proceedings commenced under this chapter and based on causes of action set

forth in Subsections 57-16-5(3) and (4), in which the mobile home park has elected to treat as actions also brought under the unlawful detainer provisions of Title 78, Chapter 36, Forcible Entry and Detainer, shall be governed by Sections 78-36-10 and 78-36-10.5 with respect to judgment for restitution, damages, rent, enforcement of the judgment and restitution.

(3) The provisions in Section 78-36-10.5 shall apply to this section except the enforcement time limits in Subsections (1)(e) and (f) shall govern.

History: C. 1953, 57-16-15.1, enacted by L. 1989, ch. 110, § 3; 1994, ch. 92, § 1; 1994, ch. 225, §§ 1, 4.

Amendment Notes. - The 1994 amendment by ch. 92, effective May 2, 1994, added the (i) and (ii) designations in Subsection (1)(a), making related grammatical changes; rewrote Subsections (1)(c) and (1)(d); divided former Subsection (1)(e) into Subsections (1)(e) and (1)(f), rewriting the provisions of present Subsection (1)(e); and made stylistic changes.

The 1994 amendment by ch. 225, § 1, effective May 2, 1994, deleted "immediately" from the end of the first sentence in Subsection (1)(e), added the reference to § 78-36-10.5 in Subsection (2), and made stylistic changes.

The 1994 amendment by ch. 225, § 4, effective May 2, 1994, which was contingent upon passage of ch. 92, added Subsection (3).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Tab B

78-36-3. Unlawful detainer by tenant for term less than life.

(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

(a) when he continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) when, having leased real property for an indefinite time with monthly or other periodic rent reserved:

(i) he continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, his designated agent, or any successor in estate of the owner, 15 days or more prior to the end of that month or period, has served notice requiring him to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, where he remains in possession of the premises after the expiration of a notice of not less than five days;

(c) when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, has remained uncomplied with for a period of three days after service, which notice may be served at any time after the rent becomes due;

(d) when he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises, or when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78-38-9, and remains in possession after service upon him of a three days' notice to quit; or

(e) when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon him and upon any subtenant in actual occupation of the premises remains uncomplied with for three days after service. Within three days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, then no notice need be given.

(2) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(3) The notice provisions for nuisance in Subsection 78-36-3(1)(d) are not applicable to nuisance actions provided in Sections 78-38-9 through 78-38-16 only.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-3; L. 1981, ch. 160, § 1; 1986, ch. 137, § 1; 1989, ch. 101, § 1; 1992, ch. 141, § 2.

Cross-References. - Nuisances, Title 47.

Right to recover treble damages from tenants committing waste, § 78-38-2.

NOTES TO DECISIONS

Analysis

Cause of action.
- Default in rent.
- Prerequisites.
- Presumptions.
- When determined.
- When exists.
Detainer not found.
Ejectment.
Federal regulations.
- Modification of state remedies.
In general.
Notice to quit.
- Administrative claim.
- Liability of tenant.
- Prerequisites.
- Sufficiency.
- Tenancy at will.
Persons liable.
Pleadings.
- Tenancy at will.
Right of re-entry.
- Contractual provisions.
Strict performance.
- Waiver.
Strict statutory compliance.
- Not required.
- Required.
Substantial compliance.
Termination of lease.
Treble damages.
- Contract of sale.
- Intervenor.
- Lease.

Cause of action.

- Default in rent.

No cause of action for unlawful detainer based on default in payment of rent survived where tenant tendered rent due within three days after service of unlawful detainer action, regardless of defects in such notice. Dang v. Cox Corp., 655 P.2d 658 (Utah 1982).

- Prerequisites.

Notice to quit is necessary to give rise to cause of action. Carstensen v. Hansen, 107 Utah 234, 152 P.2d 954 (1944).

Service of the statutory notice and the tenant's noncompliance are prerequisites to the tenant's being in unlawful detainer. Olympus Hills Shopping Ctr., Ltd. v. Landes, 821 P.2d 451 (Utah 1991).

- Presumptions.

Action of unlawful detainer presupposes absence of fraud and force, as well as existence of relation of landlord and tenant. Holladay Coal Co. v. Kirker, 20 Utah 192, 57 P. 882 (1899).

- When determined.

Whether a cause of action exists under this section is to be determined at the time the action is commenced. Van Zyverden v. Farrar, 15 Utah 2d 367, 393 P.2d 468 (1964).

- When exists.

Upon expiration of tenant's lease, the tenant is subject to ouster by an unlawful detainer action (not forcible detainer) under and pursuant to this section. Woodbury v. Bunker, 98 Utah 216, 98 P.2d 948 (1940); American Mut. Bldg. & Loan Co. v. Jones, 102 Utah 318, 117 P.2d 293 (1941), rehearing denied, 102 Utah 328, 133 P.2d 332 (1943).

Unless tenant has retained the right to refuse inspection by prospective purchasers of premises, unreasonable refusal to permit entry of premises for that purpose constitutes unlawful detainer. Glenn v. Keyes, 107 Utah 415, 154 P.2d 642 (1944).

Detainer not found.

Because a lessee was under no duty to remove a sign's foundation he was not guilty of an unlawful detainer. U.P.C., Inc. v. R.O.A. General, Inc., 380 Utah Adv. Rep. 26 (Utah Ct. App. 1999).

Ejectment.

The unlawful detainer statute is not the exclusive remedy in Utah to evict a tenant, since even if a landlord has failed to follow the statute's requirements, he may still maintain a common law action in ejectment where the lease includes a forfeiture provision to provide the basis for the action. Cache County v. Beus, 978 P.2d 1043 (Utah Ct. App. 1999).

Federal regulations.

- Modification of state remedies.

OPA rental and housing regulations, under Federal Price Control Act, were binding upon Utah courts and modified any state remedy to extent that such remedy was in conflict with that act. Callister v. Spencer, 113 Utah 497, 196 P.2d 714 (1948).

In general.

This chapter takes away the landlord's common law right to use self-help to remove a tenant, grants the landlord a summary court proceeding to evict a tenant who has violated some express or implied provision of the lease, and provides five instances in which the tenant is in unlawful detainer. The remedy for a successful landlord is restitution of the premises, treble damages, and recovery for waste or rent due. If the unlawful detainer action is based on default in payment of rent, the judgment will also mandate forfeiture of the lease. P. H. Inv. v. Oliver, 818 P.2d 1018 (Utah 1991).

Notice to quit.

- Administrative claim.

Notice to quit or pay rent served on government as required by this section was not an administrative claim sufficient to satisfy 28 U.S.C. § 2675(a), and federal court therefore had no jurisdiction over forcible entry and detainer action brought under Federal Tort Claims Act. Three-M Enters., Inc. v. United States, 548 F.2d 293 (10th Cir. 1977).

- Liability of tenant.

Action by lessor, after end of fixed term of lease, to terminate lease and require lessee to vacate premises did not terminate provision obliging tenant to pay attorney fees, where parties entered stipulation, while matter was pending, that lessee considered lease in effect and held under it after end of fixed term. Milliner v. Farmer, 24 Utah 2d 326, 471 P.2d 151 (1970).

- Prerequisites.

Notice in accordance with Subsection (1)(e) should precede notice to quit, and must be uncomplied with for five days after the service before a notice to quit is in order. Fireman's Ins. Co. v. Brown, 529 P.2d 419 (Utah 1974).

- Sufficiency.

A notice to quit is sufficient under Subsection (1)(b) in the case of a tenancy at will, as provided in contract of sale in case of default, where it merely declares a forfeiture, and is not insufficient under Subsection (1)(e) because not giving purchasers alternative of performing conditions of the agreement. Forrester v. Cook, 77 Utah 137, 292 P. 206 (1930); American Holding Co. v. Hanson, 23 Utah 2d 432, 464 P.2d 592 (1970).

Notice to quit which notified tenant that he was violating substantial obligations of tenancy by conducting certain businesses on premises, and which plainly informed tenant that he must desist from such objectionable practices by certain date and that, if on or before that date he failed to desist therefrom and had not surrendered premises, action would be commenced for restitution of premises, was not defective because notice was not expressed in the alternative as required by Subsection (1)(e) of former § 104-60-3, i.e., that violation must cease or tenancy be vacated, since such was plain intent of notice without use of word "or." Callister v. Spencer, 113 Utah 497, 196 P.2d 714 (1948).

Notice by landlord stating that tenants had failed to make payments of rent due under lease, had failed to pay utility bills, and further providing that tenants were to quit premises and deliver up possession to landlord within fifteen days did not comply with statutory requirements under this section; in absence of compliance, landlord was not entitled to maintain action for restitution of premises. American Holding Co. v. Hanson, 23 Utah 2d 432, 464 P.2d 592 (1970).

Notice of forfeiture, while sufficient to terminate a lease for breach of covenant, is not sufficient to put lessee in unlawful detainer; the notice to quit must be in the alternative, i.e., either perform or quit, before lessee becomes subject to the provisions of this chapter. Pingree v. Continental Group of Utah, Inc., 558 P.2d 1317 (Utah 1976).

Lessee was not in unlawful detainer and lessor was not entitled to maintain an action under this section where lessor's notice to vacate premises was defective in that it did not state that lessee had the alternative of paying the delinquent rent or surrendering the premises. Sovereen v. Meadows, 595 P.2d 852 (Utah 1979).

A notice to a month-to-month tenant to quit the premises need not contain the alternative of paying rent. Ute-Cal Land Dev. v. Intermountain Stock Exch., 628 P.2d 1278 (Utah 1981).

The critical distinction between a notice of unlawful detainer and a notice of forfeiture is that the notice of forfeiture simply declares a termination of the lease without giving the lessee the alternative of making up the deficiency. Dang v. Cox Corp., 655 P.2d 658 (Utah 1982).

Letter stating that "[i]n the event that [lessee] does not immediately re-open and continuously conduct normal business operations in the premises, [lessor] will terminate the Lease . . . as well as seek damages and all other available legal relief for the breach" met the requirements of Subsection (1)(e). Olympus Hills Shopping Ctr., Ltd. v. Smith's Food & Drug Ctrs., Inc., 889 P.2d 445 (Utah Ct. App. 1994), cert. denied, 899 P.2d 1231 (Utah 1995).

- Tenancy at will.

At common law a tenant at will was not entitled to notice to quit possession. Buchanan v. Crites, 106 Utah 428, 150 P.2d 100, 154 A.L.R. 167 (1944).

It is only after buyer is in the status of a tenant at will that he is amenable to the notice provided by this section, which requires him to vacate within five days or be guilty of an unlawful detainer. Van Zyverden v. Farrar, 15 Utah 2d 367, 393 P.2d 468 (1964).

Where lease was terminated by failure of tenant to pay rent and taxes, the tenant became a tenant at will and landlord properly proceeded to regain possession by the procedure set forth in Subsection (1)(b) by giving notice to vacate. Shoemaker v. Pioneer Invs., 14 Utah 2d 250, 381 P.2d 735 (1963).

Notice to purchaser who had become tenant at will for failure to make payment was sufficient under Subsection (1)(e) even though several months had elapsed between first and final notice. Beneficial Life Ins. Co. v. Dennett, 24 Utah 2d 310, 470 P.2d 406 (1970).

Persons liable.

No one but tenant of real property for term less than life can be guilty of unlawful detainer. Holladay Coal Co. v. Kirker, 20 Utah 192, 57 P. 882 (1899).

Pleadings.

- Tenancy at will.

Since on month-to-month tenancy owner could recover property on fifteen-day notice, allegation in complaint that such tenant had violated substantial obligations of rental agreement was not necessary in unlawful detainer action. Callister v. Spencer, 113 Utah 497, 196 P.2d 714 (1948).

Right of re-entry.

- Contractual provisions.

Under contract for sale and exchange of real estate, providing that seller at his option could re-enter premises and be released from his obligations upon default of buyer, seller was bound to give buyer notice of his intention to take advantage of forfeiture provision of contract, since such provision was not self-executing. Leone v. Zuniga, 84 Utah 417, 34 P.2d 699, 94 A.L.R. 1232 (1934).

Strict performance.

- Waiver.

Acceptance by vendor of purchaser's past-due payments under uniform real estate contract, and other conduct leading latter to believe that strict performance would not be required by vendor, imposes duty on vendor to give purchaser reasonable notice before vendor may insist on strict performance by purchaser. Pacific Dev. Co. v. Stewart, 113 Utah 403, 195 P.2d 748 (1948).

Strict statutory compliance.

- Not required.

There is no reason for the strict rule that landlord must demand the precise or exact amount of rent due or lose his right to recover possession of the premises. A tenant is guilty of unlawful detainer when he continues in possession after default in payment of any rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the premises, etc. Commercial Block Realty Co. v. Merchants' Protective Ass'n, 71 Utah 505, 267 P. 1009 (1928).

- Required.

This section, which provides a severe remedy, must be strictly complied with before the cause of action thereon may be maintained. Van Zyverden v. Farrar, 15 Utah 2d 367, 393 P.2d 468 (1964).

The unlawful detainer statute requires strict compliance with its terms before landlords are entitled to utilize its severe remedies, and a landlord who did not provide the tenant with clear, written notice that he or she had a chance to either bring the rent current or quit the property failed to meet the statutory requirements. Cache County v. Beus, 978 P.2d 1043 (Utah Ct. App. 1999).

Substantial compliance.

The substantial compliance doctrine applies in some residential lease situations to defeat a landlord's attempt to forfeit a lease because of a tenant's minor breach. Housing Auth. v. Delgado, 914 P.2d 1163 (Utah Ct. App. 1996).

The substantial compliance doctrine furthers the courts' general policy disfavoring forfeitures by allowing equity to intervene and rescue a lessee from forfeiture of a lease when the lessee has substantially complied with the lease in good faith. Housing Auth. v. Delgado, 914 P.2d 1163 (Utah Ct. App. 1996).

Trial court correctly determined that the equitable doctrine of substantial compliance applies to residential leases in Utah, and its findings that defendant had substantially complied with lease at issue was supported by adequate evidence. Housing Auth. v. Delgado, 914 P.2d 1163 (Utah Ct. App. 1996).

Termination of lease.

A lease may be terminated pursuant to an unlawful detainer action. Hackford v. Snow, 657 P.2d 1271 (Utah 1982).

Treble damages.

- Contract of sale.

In a suit for amounts due under a contract of sale of real estate, where the vendors gave notice of forfeiture of the contract only and did not give the purchaser an alternative to pay up or quit, as is required under this section, the vendors were not entitled to treble damages for unlawful detainer. Erisman v.

Overman, 11 Utah 2d 258, 358 P.2d 85 (1961).

- Intervenor.

A person not actually occupying the premises who intervenes in an action to obtain possession and for damages for unlawful detainer, and who asserts ownership and the right to possession by the occupier as his tenant, may be guilty of unlawful detainer and liable for treble damages where the court finds this intervener's claim invalid. Tanner v. Lawler, 6 Utah 2d 84, 305 P.2d 882, modified on another point, 6 Utah 2d 268, 311 P.2d 791 (1957).

- Lease.

Under a lease contract for a period of years, in which the lessee defaulted, notice by the lessor for the lessees to quit the premises was not sufficient for treble damages. Under such a lease the statutes require an alternative notice that the tenant either perform or quit before he becomes an unlawful detainer and subject to treble damages. Jacobson v. Swan, 3 Utah 2d 59, 278 P.2d 294 (1954).

COLLATERAL REFERENCES

Am. Jur. 2d. - 49 Am. Jur. 2d Landlord and Tenant § 352 et seq.; 50 Am. Jur. 2d Landlord and Tenant § 264 et seq.

C.J.S. - 52A C.J.S. Landlord and Tenant § 758.

A.L.R. - Right of landlord legally entitled to possession to dispossess tenant without legal process, 6 A.L.R.3d 177.

Grazing or pasturage agreement as violation of covenant in lease or provision of statute against assigning or subletting without lessor's consent, 71 A.L.R.3d 780.

Express or implied restriction on lessee's use of residential property for business purposes, 46 A.L.R.4th 496.

Landlord's permitting third party to occupy premises rent-free as acceptance of tenant's surrender of premises, 18 A.L.R.5th 437.

Tab C

OCTOBER 23, 1997

RE: BROOKSIDE MOBILE HOME PARK
V
SAM PEEBLES

96-316

The matter is before the court on plaintiff's Motion for Summary Judgment. The action was commenced for the eviction of defendant from plaintiff's property, a mobile home park. The claim is that because there is no lease between the parties and defendant has failed to maintain the home in compliance with park rules, sufficient notice has been given for a tenant at will and, failing to leave with such notice, defendant is in unlawful detainer.

Defendant's response is that there is a lease and therefore the notice is deficient, pursuant to the Mobile Home Park Residency Act, Title 57, Chapter 16, Section 1 *et. seq.* UCA. Additionally, defendant counterclaims alleging, in several causes of action, that plaintiff has interfered with the sale of the mobile home to potential buyers. Because of this interference, plaintiff has been unable to sell the home and has sustained damages.

This motion was previously entertained and denied by Judge Barrett. The first issue is whether I am in a position to revisit the motion? A reconsideration should be avoided unless the situation dictates to the contrary. There is no need to recite all the reasons why this should be so.

In this case there are two bases upon which such a reconsideration is appropriate. First, because of rescheduling, there is a different judge assigned to the matter. Consideration of pre-trial motions should fall within the purview of the trial judge, especially where those motions are dispositive of the case. Otherwise, the case has the potential of being handled inconsistently.

616

Secondly, there has been discovery conducted by the parties since the motion was considered by Judge Barrett. Although there is no recitation of specific facts or law that are now different, that discovery has assisted in clarifying the issues that need to be considered in connection with the motion. Consequently, such a reconsideration is appropriate.

The fact upon which the matter turns is whether there is a lease between the parties? I have come to the conclusion that there is no factual or legal dispute concerning this issue.

The parties had no written lease directly between them. Defendant alleges that he signed, on two occasions, leases with the prior owner of the mobile home park. Plaintiff assumes those leases with their purchase of the property. However the undisputed fact is that a lease for the mobile home space was signed, after plaintiff purchased the property, with at least one of the purchasers of the mobile home from defendant. There is no dispute raised that these leases were entered into with defendant's knowledge and consent. The effect of the arrangement was to terminate any lease agreement that existed between plaintiff and defendant to that time.

Defendant urges that it was the custom of the prior owner of the park to maintain leases with both the owner of a mobile home and, if a different person, the resident. That alleged fact, even though in dispute, is not material. Plaintiff was not a party to such arrangements and, in any event as indicated above, such leases were terminated.

Defendant urges that there was a constructive lease by verbal agreement between the parties and several facts, in dispute, are cited in confirmation of this proposition. However, this also is immaterial. UCA 57-16-4 requires that the lease of mobile home space be in writing.

The opinion given in *Rainbow Terrance, Inc. v. Hutchens,* 557 N.W.2d 618 (Minn.App. 1997) is cited for the proposition that the *Mobile Home Park Residency Act* should be read to not

necessarily require that the lease be in writing. This opinion must be read in conjunction with *Lea v. Pieper*, 345 N.W.2d 267 (Minn.App. 1984).

I, however, am not persuaded that the plain language of the Act can be ignored. Beyond this plain language, it is clear that the statute is premised on the requirement that the lease be in writing. Otherwise, several sections within the statute would make no sense.

Defendant's counterclaim is likewise premised on whether there is a lease between the parties. There is no indication that defendant was hampered in any way in selling the home *per se*. The problem is in subleasing or having plaintiff enter into a lease of the space with the new owners in order that the home could remain in the park. If you do not have a lease, you can neither sublease nor require the park owner to enter into a lease with the new owners of the mobile home.

For these reasons, there is no dispute concerning the law or the facts and plaintiff's notion is granted.

DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, MURRAY DEPARTMENT

BROOKSIDE MOBILE HOME PARK

Plaintiff

vs.

SAM PEEBLES

Defendant

NOTICE OF DECISION

CIVIL NO. 960003616

Judge: FRATTO

MOTION FOR SUMMARY JUDGMENT

having been submitted for decision without oral argument pursuant to rule 4-501, Rules of Practice, and the court being now fully advised in the premises:

Motion is hereby GRANTED - SEE ATTACHED DECISION OF JUDGE FRATTO

VonaMae Dunn
Deputy Court Clerk

619

October 27, 1997

Copies mailed to:

DENNIS K POOLE
4543 SO 700 E., SUITE 200
SALT LAKE CITY, UT 84107

RUSSELL A. CLINE
310 SO MAIN ST., #1200
SALT LAKE CITY, UT 84101

Tab D

FEBRUARY 20, 1998

RE: BROOKSIDE MOBILE HOME PARK
V
SAM PEEBLES

96-3616

Matter is before the court on defendant's Motion to Reconsider and Objection to Form of Order. Having re-examined the matter, I am still convinced that the factual and legal issue upon which the case turns is whether there was a lease between the parties?

Plaintiff contends, even if defendant had a lease with a prior owner to which plaintiff is subject, that lease has been surrendered. Defendant was aware of and, at least tacitly, agreed to lease arrangements between plaintiff and subsequent occupants of the mobile home. As a consequence of this knowledge and approval, defendant has surrendered the lease and is not afforded the right to notice of a lessee.

Defendant asserts that in granting summary judgment I failed to comprehend defendant's position on the issue and was in error when I concluded in a written opinion, "There is no dispute raised that these leases were entered into with defendant's knowledge and consent".

There is no dispute about the legal proposition concerning surrender. However, defendant does dispute that there was a surrender alleging he had no knowledge that there were lease agreements with occupants of the mobile home with whom he dealt with as subtenants. Defendant further asserts facts that could be interpreted to demonstrate that he was dealt with by plaintiff in a manner reflective of his perceived position as tenant. Most notably, that the notice to vacate refers to defendant as a tenant.

The effect of these assertions is that there is a dispute of a material fact and my previous conclusion to the contrary is erroneous.

Accordingly, the Motion to Reconsider is granted and the matter will be set for trial. The Objection to Form of Order is moot and, therefore, denied without prejudice. Counsel for defendant should submit an appropriate order memorializing this decision.

DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, MURRAY DEPARTMENT

BROOKSIDE

Plaintiff

NOTICE OF DECISION

vs.

CIVIL NO. 960003616

SAM PEEBLES

Judge: FRATTO

Defendant

SEE ATTACHED DECISION OF JUDGE FRATTO

having been submitted for decision without oral argument pursuant to rule 4-501, Rules of Practice, and the court being now fully advised in the premises:

Motion is hereby

STATE OF UTAH

VonaMae Dunn
Deputy Court Clerk

February 23, 1998

Copies mailed to:

DENNIS K POOLE
4543 SO 700 E., SUITE 200
SALT LAKE CITY, UT 84107

RUSSELL A CLINE
310 SO MAIN ST., #1200
SALT LAKE CITY, UT 84101

Tab E

In The Third Judicial District Court Of Salt Lake County
Murray Department, State of Utah

BROOKSIDE MOBILE HOME PARK Plaintiff, vs. SAMUEL B. PEEBLES and HAROLD BOYD PEEBLES Defendant	**NOTICE OF DECISION** **JUDGE J.C. FRATTO** **Case No.** 960003616

RE: **JUDGE'S DECISION**

Having been submitted for decision without oral argument pursuant to rule 4-501, Rules of Practice, and the court being now fully advised in the premises:

See Attached Decision.

Dated March 1, 1999

Ellen Shaw, Deputy Clerk

I certify that I mailed a copy of this notice on March 1, 1999 to the following:

DENNIS K. POOLE, Atty. For Pltf.
4543 South 700 East, Suite 200
Salt Lake City, UT 84107

RUSSELL A. CLINE, Atty. For Defts.
310 South Main Street, #1200
Salt Lake City, Ut 84107

February 24, 1999

RE: BROOKSIDE MOBILE HOME PARK
V
SAMUEL B. PEEBLES

960003616

The matter is before the court on both parties application for an award of attorney fees and costs. This issue was reserved to be determined by the court following trial. During the course of the jury trial, plaintiff's First Amended Complaint and the claims made therein were dismissed on the grounds that the notice of eviction was inadequate. The jury, empaneled to hear the case, determined that defendant's counterclaims presented no cause of action against plaintiff.

Plaintiff asserts that it is entitled to attorney fees and costs for the successful defense of the counterclaims. Defendant claims attorney fees based on the dismissal of plaintiff's complaint. Both maintain that attorney fees and costs should be awarded pursuant to Title 57 Chapter 16 Section 8 *Utah Code Ann* (1953 as amended). Plaintiff should get the fees because the statute incorporates a successful defense of any claim made during the course of litigation initiated under the *Mobile Home Park Residency Act*. Defendant should get the fees because the complaint was dismissed.

In considering plaintiff's request, I see no appropriate basis to make such an award. The statute only allows reasonable attorney fees and costs for successful prosecution or defense of claims involving and arising from eviction under the act. Other tortious or breach of contract claims that may be raised, as compulsory or permissive counterclaims, are not covered by the attorney fee provision of the statute.

"Upon final termination of the issues between the parties,...." language can only be interpreted to relate to the, "...contest an eviction proceeding" predicate and, thus, limit fees to the prevailing party on only that issue.

This analysis is part of the basis in denying defendant's request. Although plaintiff's claims were dismissed because of insufficient notice, defendant did not prevail on the issue for which the statute would permit the award of fees. The issue presented by plaintiff's First Amended Complaint was, whether defendant should be required to quit the premises and move the mobile home? That issue was rendered moot when defendant voluntarily quit the property, moved the home prior to trial and paid arrears on rent.

Although it may be that plaintiff cannot be a prevailing party when a claim for eviction is dismissed, defendant does not automatically became the prevailing party because of the dismissal. The reasons for and the results of the dismissal must be analyzed. Defendant avoided an award of treble damages as a result of the dismissal. Plaintiff recovered the property and rents.

Accordingly, the requests for award of attorney fees and costs are denied.

With this determination, counsel for plaintiff should prepare and submit proposed findings, conclusions and a judgment.

Tab F

DENNIS K. POOLE (2625)
ANDREA NUFFER GODFREY (6623)
DENNIS K. POOLE & ASSOCIATES, P.C.
Attorneys for Plaintiff
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107
Telephone: (801) 263-3344
Telecopier: (801) 263-1010

IN THE THIRD DISTRICT COURT, STATE OF UTAH

SALT LAKE COUNTY, MURRAY DEPARTMENT

BROOKSIDE MOBILE HOME PARK, LTD., *a Utah Limited Partnership, dba* BROOKSIDE MOBILE HOME PARK, Plaintiff, vs. SAM PEEBLES aka SAMUEL B. PEEBLES, an Individual; and HAROLD BOYD PEEBLES, an Individual, Defendant.	**JUDGMENT** CIVIL NO. 960003616CV JUDGE J. C. FRATTO

The above-entitled matter having come on for trial before a jury on the 1st, 2nd and 5th days of October, 1998, and the Plaintiff being represented by its attorney, Dennis K. Poole, and the Defendants being represented by their attorney, Russell A. Cline, and the Court having subsequently considered motions of both the Plaintiff and the Defendants for attorneys' fees, and having entered its Notice of Decision dated March 1, 1999, and for good cause appearing,

JUDGMENT IS HEREBY GRANTED AS FOLLOWS:

1. Defendants' motion to dismiss the claims of the Plaintiff, which motion was made at the conclusion of Plaintiff's case, was granted for and on the grounds that Plaintiff failed to provide a 15-day notice to quit in accordance with the requirements of the *Utah Mobile Home Residency Act*.

2. As a result of the special verdicts of the jury which found that the Plaintiff assumed no lease with the Defendants Sam Peebles and/or Harold Peebles and did not unreasonably withhold its consent to one or more prospective purchasers of the Sam Peebles mobile home, all claims of the Defendants against the Plaintiff are dismissed, no cause of action.

3. With respect to the respective motions of the Plaintiff and Defendants for attorneys' fees and costs in this matter, and based upon the decisions of the Court dated March 1,1999, neither party is a prevailing party and, as a consequence thereof, both motions for attorneys' fees and costs are denied.

JUDGMENT DATED this 13rd day of ~~April~~ May, 1999.

BY THE COURT:

J. C. FRATTO
District Court Judge

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the above and foregoing JUDGMENT in Case No. 960003616CV was mailed, postage prepaid, United States Mail, the 29th day of April, 1999, to the following:

Russell A. Cline, Esq.
CRIPPEN & CLINE
10 West 100 South, Suite 425
Salt Lake City, Utah 84101